

DATE

Kathy Dwyer  
Chair, State Advisory Committee  
La. Office of Citizens with Developmental Disabilities  
1525 Papworth Avenue  
Metairie, Louisiana 70005

Re: **Louisiana Board of Ethics**  
**Docket No. 2021-205**

Dear Ms. Dwyer,

The Louisiana Board of Ethics, at its meeting on May 7, 2021, considered your request for an advisory opinion as to the application of the Code of Governmental Ethics (“Code”) to certain members of the Regional Advisory Committees and the State Advisory Committee in connection with the La. Office of Citizens with Developmental Disabilities.

#### **FACTS PROVIDED**

The La. Developmental Disability Law (La. R.S. 28:451.1, *et seq.*) was enacted to provide for a developmental disabilities services system that values all persons with developmental disabilities and affirms their fundamental rights and privileges as citizens of Louisiana and the United States of America as provided in the Developmental Disabilities Assistance and Bill of Rights Act. The La. Office of Citizens with Developmental Disabilities (“OCDD”), within the La. Department of Health (“LDH”), is responsible for leadership in designing and developing developmental disabilities services provided by the department either directly or pursuant to agreements with public and private providers. La. R.S. 28:451.1D. OCDD, through the individual human services districts and authorities, serves as the single point of entry into the system. La. R.S. 28:451.3A.

#### **HUMAN SERVICES DISTRICTS/AUTHORITIES**

The Legislature has created ten (10) human services districts and authorities to provide state-funded behavioral healthcare and care for persons with intellectual disabilities and developmental disabilities across Louisiana. La. R.S. 28:910A. Each human services district is a local governing entity with local accountability and management of behavioral health, intellectual disability, and developmental disability services, as well as any public health or other services contracted to the district by LDH. La. R.S. 28:911A(5). Each human services district is governed by a board, whose members are required to be residents of the parishes covered, as well as possess expertise in a related field of health, or be a

parent, consumer, or advocate in a related field such as developmental disabilities. La. R.S. 28:913 – 913.6.

Each human services district board shall, among other duties, be responsible for community-based programs and functions relating to the care, diagnosis, training, treatment, case management, and education of persons with intellectual disabilities, persons with developmental disabilities, and persons with autism. La. R.S. 28:915A(2). Additionally, each human services district board shall have the power to enter into contracts to establish such services including development disabilities services. La. R.S. 28:915B(6).

#### REGIONAL ADVISORY COMMITTEE

Pursuant to La. R.S. 28:451.3D, each human services district is required to maintain a regional advisory committee, which is composed of a minimum of twelve members who represent positions and philosophies held by various groups and advocates for persons with developmental disabilities, including (1) persons with developmental disabilities, (2) parents and family members representing persons who receive a cross section of developmental disabilities services, (3) private providers, (4) representatives of advocacy organizations, and (5) public providers and administrators of local administrative units and human services districts, who may be appointed as ad hoc, non-voting members of the Regional Advisory Committee. La. R.S. 28:451.3D(2). These regional advisory committee members are separate and distinct from the members who comprise the human services district boards.

Each regional advisory committee performs the following functions: (1) provide public input into the district planning process and comment on regulations proposed by the office, (2) receive timely information on the budgets of their respective human services districts, in addition to information on implementation of all services and quality assurance reports by those districts, and advise the authorities and districts, and (3) collaborate with the human services districts to develop outreach plans for each geographic area. None of the regional advisory committees have any supervision or control over contracts entered into by OCDD or the respective human services district.

#### STATE ADVISORY COMMITTEE

Pursuant to La. R.S. 28:451.3F, OCDD established a State Advisory Committee which coordinates with all human services district advisory committees, and provides public input to OCDD regarding proposed regulations and the development of state planning and budget. The State Advisory Committee is comprised of at least two members from each human services district regional advisory committee. The State Advisory Committee does not have any supervision or control over contracts entered into by OCDD.



## LA. DEVELOPMENTAL DISABILITIES COUNCIL

Pursuant to La. R.S. 28:750 *et seq.*, the La. Developmental Disabilities Council was established as a separate part of LDH to serve as an advocate for persons with developmental disabilities. The Council plans effective coordination of state resources to meet the needs of persons with developmental disabilities, promotes the dignity of persons with developmental disabilities, serves as an advisor to the governor, the secretary of LDH, and the legislature on programs and policies pertaining to services for persons with developmental disabilities and their families, and promotes the provision of a full range of services, assistance, and opportunities for persons with developmental disabilities. La. R.S. 28:750B. Members are appointed by the governor, and shall consist of individuals with developmental disabilities, parents or guardians of children with developmental disabilities, or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves.

You ask several questions regarding the application of the Code to members of the Regional Advisory Committees and the State Advisory Committee.

### ISSUE NO. 1 – EMPLOYMENT WITH A PRIVATE ENTITY

The Families Helping Families (“FHF”) Networks are private, non-profit resource centers. They promote advocacy and are committed to reaching families who have members with disabilities. The individual FHF centers are directed and staffed by parents, self-advocates, or family members of individuals with disabilities. The centers provide education and trainings, peer support, and information and referrals as part of their services. There is a separate FHF center in each human services district and authority region. Each FHF center has a contractual relationship with their respective human services district as well as directly with OCDD and La. Developmental Disabilities Council. You stated that FHF does not have a contractual relationship with any of the Regional Advisory Committees, and does not receive funding from the Regional Advisory Committees. You further stated that neither the Regional Advisory Committees, nor the State Advisory Committee, has the authority to affect the service provider contracts with OCDD or the human services districts.

You ask whether employees of FHF can serve as appointed members of their respective Regional Advisory Committee while FHF has a contractual relationship with the individual human services districts, OCDD, and the La. Developmental Disabilities Council.

**La. RS. 42:111C(2)(d)** provides that no public servant shall receive any thing of economic value for services rendered to a person if that person: (1) has a contractual, business, or financial relationship with the public servant’s agency; (2) conducts operations which are regulated by the public employee’s agency; or (3) has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee’s official duty. La. R.S. 42:1102(2)(a) defines “agency” to mean a

department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. For purposes of the Code, "agency of the public servant" and "his agency" when used in reference to the agency of a public servant shall mean: (i) ... in the case of public servants who are members or employees of a board or commission ..., it shall mean the board or commission. La. R.S. 42:1102(16) defines "person" to mean an individual or legal entity other than a governmental entity or agency thereof.

The Board concluded, and instructed me to inform you, that Regional Advisory Committee members would not be prohibited by Section 1111C(2)(d) from receiving employment compensation from FHF while they serve on their respective Regional Advisory Committees, since FHF does not have a contractual, business, or financial relationship with any of the Regional Advisory Committees, is not regulated by any of the Regional Advisory Committees, and does not have substantial economic interests which can be affected by the performance of the duties of a member of the Regional Advisory Committees.

Additionally, the Board further concluded, and instructed me to inform you, that State Advisory Committee members would not be prohibited by Section 1111C(2)(d) from receiving employment compensation from FHF while they serve on the State Advisory Committee, since FHF does not have a contractual, business, or financial relationship with the State Advisory Committee, is not regulated by the State Advisory Committee, and does not have substantial economic interests which can be affected by the performance of the duties of a member of the State Advisory Committee.

## **ISSUE NO. 2 – DISABILITY SERVICES CONTRACT**

You ask whether a Regional Advisory Committee board member would be prohibited from signing a contract with the local human services district to receive developmental disability services for a family member. You stated that the Regional Advisory Committee has no supervision or authority over the individual services agreements. All authority over the services agreements remains with the local human services districts. You stated that neither the Regional Advisory Committees, nor the State Advisory Committee, has authority over the agreements between the family member and the human services district.

**La. R.S. 42:1113B:** No appointed member of any board or commission or member of his immediate family shall bid on or enter into or be in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of the agency of such appointed member.

The Board concluded, and instructed me to inform you, that Section 1113B would not prohibit an appointed member of one of the Regional Advisory Committees from entering into a transaction with the local human services district for disability services, since the application for services is under the supervision or jurisdiction of the local human services



district and is not under the supervision or jurisdiction of the Regional Advisory Committee.

### **ISSUE NO. 3 – EMPLOYMENT WITH A PUBLIC SCHOOL SYSTEM**

Human services districts are charged with providing services for toddlers and their families transitioning from Early Steps to OCDD Home and Community Based Waiver Services, as well as students with developmental disabilities. As a result, local public school systems interact with the respective human services districts to provide the required services. You ask whether an employee of a public school system may be appointed as a member of their respective Regional Advisory Committee. You stated that these school systems are not private schools or charter schools.

The Board concluded, and instructed me to inform you, that Section 111FC(2)(d) (see above) would not prohibit an appointed member of one of the Regional Advisory Committees from receiving compensation from a public school system since the public school system is not a “person” for purposes of the Code.

### **ISSUE NO. 4 – PROHIBITED PARTICIPATION**

You ask whether a member of one of the Regional Advisory Committees or the State Advisory Committee could abstain from voting on issues that present a conflict of interest.

**La. R.S. 42:1112B(1)** provides that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest. La. R.S. 42:1102(13) defines “immediate family” to include a public servant’s children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse.

**La. R.S. 42:1112B(3)** provides that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any person, of which he is an officer, director, trustee, partner, or employee, has a substantial economic interest.

**La. R.S. 42:1102.4** provides:

A. If any appointed member of a board or commission in the discharge of a duty or responsibility of his office or position, would be required to vote on a matter which vote would be a violation of R.S. 42:1112, he shall recuse himself from voting.

B. An appointed member of a board or commission who recuses himself from voting pursuant to this Section shall be prohibited from participating in discussion and debate concerning the matter.

The Board concluded, and instructed me to inform you, that an appointed member of one of the Regional Advisory Committees and of the State Advisory Committee, would be

required to recuse themselves from discussion, debate, and vote on any issue that presents a possible violation of participation provisions in La. R.S. 42:1112.

The Board further cautioned that a transaction with either the Regional Advisory Committee or the State Advisory Committee which would present a potential violation of Section 1113B cannot be cured by recusal. However, the following exception to the Code would allow the committee member to remain employed by an entity seeking to contract with OCDD:

**La. R.S. 42:1123(23):**

This Part shall not preclude: Any member of the state or regional advisory committees for the office for citizens with developmental disabilities from being employed by a private, nonprofit, corporation, agency, organization, or association that receives state funds under contractual agreement with the office for citizens with developmental disabilities. However, such member shall recuse himself from participating in any action of the committee specifically relating to such contracts with the office for citizens with developmental disabilities for the receipt of state funds.

The Board suggests that any specific member request an advisory opinion prior to entering into any transaction in the event a potential conflict of interest arises.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Code of Governmental Ethics. Please note that the Board issues no opinion as to past conduct and that the Board's expressed opinion is limited to an examination of the Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions in the gaming laws.

If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

**LOUISIANA BOARD OF ETHICS**

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David M. Bordelon  
For the Board